

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JOSEPH BROWN
ADC #194250

PLAINTIFF

v.

4:18cv00525-BSM-JJV

PULASKI COUNTY REGIONAL
DETENTION FACILITY; *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to Chief United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence proffered at the hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Joseph Brown (“Plaintiff”) commenced this *pro se* action, pursuant to 42 U.S.C. § 1983, while he was a pretrial detainee at the Pulaski County Regional Detention Facility (“PCRDF”). (Doc. No. 2.) On August 15, 2018, I entered an Order giving Plaintiff thirty days to either pay the \$400 filing fee in full or file a properly completed Application to Proceed Without Prepayment of Fees and Affidavit (“Application”) and a Calculation of Initial Payment of Filing Fee Sheet (“Calculation Sheet”). (Doc. No. 3.) I also warned Plaintiff that, pursuant to Local Rule 5.5(c)(2), I would recommend dismissal if he failed to timely and properly comply with my instructions. (*Id.*)

Plaintiff then filed an Amended Complaint and a Response alleging unspecified jailers were withholding the forms I sent him and refusing to complete his Calculation Sheet. (Doc. Nos. 4, 5.) On August 22, 2018, I entered an Order asking the PCRDF

Administrator's assistance in having the Application delivered to Plaintiff and the Calculation Sheet completed by the appropriate jail official. (Doc. No. 7.) I also gave Plaintiff an extension, until September 21, 2018, to return the properly completed paperwork or pay the filing fee in full. (*Id.*)

On August 28, 2018, Sergeant R. Ballard from the Pulaski County Sheriff's Office filed a Memorandum stating that, on August 27, 2017, he delivered a completed Calculation Sheet and a blank Application to Plaintiff for his review and completion. (Doc. No. 8.) According to Ballard, Plaintiff looked at the forms, signed his initials to both documents to acknowledge receipt, and then threw the forms at Ballard's feet *without signing or completing the Application*. (*Id.*) I have verified that Plaintiff's initials appear on the blank Application and completed Calculation Sheet that were attached to Ballard's Memorandum. (*Id.*) Without the information requested on the Application, I cannot determine whether Plaintiff is entitled to proceed *in forma pauperis*.

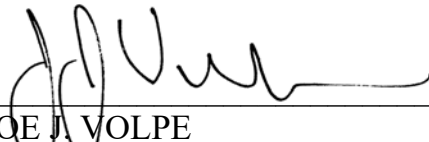
As of the date of this Recommendation, Plaintiff has not complied with my August 22, 2018, Order, and the time to do so has expired. Further, because Plaintiff has been released from the PCRDF without providing the Court with a forwarding address, it would be futile to grant him another extension of time to comply with my instructions. (Doc. Nos. 9, 10.)

IT IS, THEREFORE, RECOMMENDED that:

1. Pursuant to Local Rule 5.5(c)(2), this case be DISMISSED without prejudice due to Plaintiff's failure to comply with my August 22, 2018, Order.

2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting this recommendation and the accompanying Judgment would not be taken in good faith.

DATED this 25th day of September, 2018.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE